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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,075	01/09/2002	Klaus Schumacher	1894-36	5234

7590

11/20/2002

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/041,075

Applicant(s)

SCHUMACHER, KLAUS

Examiner

James N Smalley

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.                      6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A - Figs. 2 and 5

Species B – Fig. 6

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Norman Lehrer on 11/07/02 a provisional election was made with traverse to prosecute the invention of species A, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "insert" on line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by A. Podel 969. A. Podel 969 discloses a dual bottle closure/sealed package comprising a bottle 1 having an opening

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and a neck with external screw threads 5 formed thereon, an external closure in the form of an external cap/cover cap 9 for covering the opening of the bottle, the external cap having internal screw threads 15 which mate with the screw threads of the neck and an internal closure in the form of an imperforate crown cap/hermetic closure 4 or 20 secured to the bottle (see text page 1, second column, lines 54-55 continuing onto lines 1-2 of the second text page, first column), wherein the external cap substantially encloses the crown cap when the external cap is threaded on to the neck of the bottle, the external closure/external cap having an insert/liner 19 that fits within the cap.

7. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by A. F. Driscoll 815. A. F. Driscoll 815 discloses a dual bottle closure/container comprising a bottle 10 having an opening and a neck with external screw threads 16 formed thereon, an external closure in the form of an external cap 18 for covering the opening of the bottle, the external cap having internal screw threads which mate with the screw threads of the neck and an internal closure in the form of an imperforate crown cap 22 secured to the bottle, wherein the external cap substantially encloses the crown cap when the external cap is threaded on to the neck of the bottle, the external closure/external cap having an insert/liner 20 that fits within the cap.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over A. Podel 969 as applied to claims 1-2 above and in view of Granger et al. 173.

A. Podel 969 does not disclose an insert carrying the internal screw threads.

Granger et al. 173 disclose it is known to provide a plastic insert carrying internal screw threads and teaches the benefit of esthetic quality and durability for a large number of opening cycles in col. 1, lines 21-29.

It would have been obvious to modify the plastic insert/liner of A. Podel 969 with the plastic liner/insert of Granger et al. 173. One having ordinary skill in the art would be motivated to make such a modification so as to obtain the benefit of improved esthetic quality and durability for a large number of opening cycles.

10. Claims 1, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over A. Podel 969 as set forth in claims 1-2 above, and in view of L. C. Miller 742.

A. Podel 969 does not show a bottle or cap made from ceramic and does not disclose the material forming the liner.

The examiner takes Official Notice to the fact that forming the bottle and cap from ceramic is an obvious exchange of suitable materials. Additionally, the selection of ceramic to form the bottle and cap lacks criticality in the specification. In other words, the specification fails to teach the using ceramics as a "best mode" over other suitable materials.

L. C. Miller 742 discloses a container cap liner and teaches it is known to fabricate container cap liners from plastic in col. 1, lines 1-5, and further teaches the benefit of plastic liners in col. 2, lines 6-13.

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It would have been obvious to one having ordinary skill in the art to provide a plastic liner within the cap of a bottle as taught by L.C. Miller 742. One having ordinary skill in the art would have been motivated to make such a modification so as to obtain the benefit of having improved sealing characteristics.

11. Claims 1, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over A. F. Driscoll 815 as set forth in claims 1-2 above, and in view of L. C. Miller 742.

A. F. Driscoll does not show a bottle or cap made from ceramic and does not disclose the material forming the liner, instead noting that his liner is of the conventional type (see col. 1, lines 32-33).

The examiner takes Official Notice to the fact that forming the bottle and cap from ceramic is an obvious exchange of suitable materials. Additionally, the selection of ceramic to form the bottle and cap lacks criticality in the specification. In other words, the specification fails to teach the using ceramics as a “best mode” over other suitable materials.

L. C. Miller 742 discloses a container cap liner and teaches it is known to fabricate container cap liners from plastic in col. 1, lines 1-5, and further teaches the benefit of plastic liners in col. 2, lines 6-13.

It would have been obvious to one having ordinary skill in the art to provide a plastic liner within the cap of a bottle as taught by L.C. Miller 742. One having ordinary skill in the art would have been motivated to make such a modification so as to obtain the benefit of having improved sealing characteristics.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents show glass bottles and glass caps having inserts with threaded connections: US 4,273,247 and US 1,617,843. The following document shows a glass bottle having a crown cap inner seal substantially surrounded by a cap: US 1,633,276.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

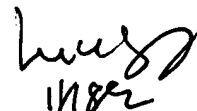
Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>

JNS  
November 13, 2002

  
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